



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: MAY 02, 2023

IN THE MATTER OF:

Appeal Board No. 628183

PRESENT: MARILYN P. O'MARA, MEMBER

The Department of Labor issued the initial determination disqualifying the claimant from receiving benefits, effective September 22, 2022, on the basis that the claimant voluntarily separated from employment without good cause. The claimant requested a hearing.

The Administrative Law Judge held telephone conference hearings at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances on behalf of the claimant and the employer. By decision filed February 13, 2023 (), the Administrative Law Judge overruled the initial determination.

The employer appealed the Judge's decision to the Appeal Board. The Board considered the arguments contained in the written statements submitted on behalf of the claimant and the employer.

Our review of the record reveals that the case should be remanded to hold a hearing. We have determined that further testimony and evidence should be taken before a decision is issued.

The parties are placed on notice that at the remand hearing, the Administrative Law Judge will also consider the question of whether the claimant may have voluntarily left his employment without good cause by resigning in anticipation of discharge.

At the remand hearing, the claimant shall be questioned in further detail about why he told the property manager that she could not fire him and the

source of his knowledge that she could not. He should also be questioned about Sharon Johnson's testimony that at the end of their argument, he informed her that he was returning to work in the basement, as well as Ronald Matthews's testimony that he did in fact go downstairs to the basement at that point. The claimant then should be questioned about why he went to the basement.

The employer should produce Melissa Blumlein and any other person who was involved in the review of the Disciplinary Notice submitted by Sharon Johnson. They should be questioned about why the employer decided to not terminate the claimant's employment over the incident of September 21, 2022. They should also explain about why a full week passed before the employer sent the claimant the September 29, 2022 letter directing him to report back to work on October 3. The employer should be prepared to produce Ms. Johnson and Mr. Matthews in the event that further testimony is needed from them.

The parties may produce any other relevant witnesses or documents. The Judge may take any further testimony and evidence necessary to decide the case.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge is rescinded; and it is further

ORDERED, that the case is remanded to the Hearing Section to hold a hearing, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

MARILYN P. O'MARA, MEMBER